

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2008-158-T - ORDER NO. 2009-8  
JANUARY 15, 2009

IN RE: Application of Paxton Van Lines, Inc. d/b/a	)	ORDER GRANTING
Paxton Van Lines of North Carolina, Inc. for	)	CERTIFICATE
a Class E (Household Goods) Certificate of	)	
Public Convenience and Necessity for	)	
Operation of Motor Vehicle Carrier	)	
	)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Application of Paxton Van Lines Inc. d/b/a Paxton Van Lines of North Carolina, Inc. (“Paxton” or “Applicant”), 511 Johnson Road, Charlotte, North Carolina 28206 for a Class E Certificate of Public Convenience and Necessity for statewide authority to transport household goods as defined by R.103-210(1).

The Applicant was instructed to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing was published and instructed the public as to how to file pleadings to participate in the proceedings on the Application.

By Order dated August 26, 2008, the Commission denied one Petition to Intervene Out of Time (See Order No. 2008-596). However, at its September 24, 2008 agenda meeting, the Commission granted Petitions to Intervene Out of Time filed September 18, 2008, by Lytle’s Transfer and Storage, Inc. (“Lytle’s”), Kohler Moving and Storage, Inc. (“Kohler”), Adams Investments, Inc. d/b/a Adams Moving and Storage

(“Adams”), and Smith Dray Line Moving and Storage Company, Inc. (“Smith Dray Line”) (collectively as “Intervenors”).

### **EVIDENCE OF RECORD**

A hearing on the Application was held on September 24, 2008. The Honorable Elizabeth B. Fleming presided. Present representing the Applicant was Scott Elliott, Esquire. Appearing on behalf of the intervenors was John J. Pringle, Jr., Esquire. Appearing on behalf of the Office of Regulatory Staff (“ORS”) was Shealy Boland Reibold, Esquire.

Testifying for Paxton were Stephen Hunt, Paxton’s general manager, and shipper witnesses Peggy Leete and Daryl Mattes.

Mr. Hunt testified that Paxton was certificated as a household goods mover in Virginia, North Carolina and Georgia. Mr. Hunt testified that Paxton had sufficient capital, equipment and personnel to perform services as a household goods mover. Paxton holds a franchise with Atlas Van Lines and operates currently as an interstate mover of household goods. Mr. Hunt testified that Paxton had developed business relationships with certain interstate businesses operating in South Carolina for the purpose of moving their employees or customers. In particular, Paxton has an agreement with the interstate law firm of Moore and Van Allen to move its employees to locations in the states where the law firm has offices. Moore and Van Allen has an office in Charleston, South Carolina. Paxton has a similar relationship with Jordan, Jones and Goulding, an interstate engineering firm with an office in Columbia, South Carolina. Paxton has an agreement with Weichert Realty, a national realty firm to move Weichert’s real estate

clients in all states, including, when permitted, South Carolina. Mr. Hunt testified that a need exists for a mover within the state of South Carolina to serve these customers, and that Paxton was prepared, once certificated by this Commission, to fill that need.

In addition, Mr. Hunt testified that Paxton's advertising market was within a one hundred (100) mile radius of Charlotte, North Carolina reaching the Columbia, South Carolina area. Mr. Hunt receives 6 to 8 inquiries per week asking Paxton to perform household moves within South Carolina. Of course, these moves must be declined until Paxton receives a certificate of authority for South Carolina. Mr. Hunt testified that he resides in York County, South Carolina and that he has inquiries from friends, associates, and neighbors on a regular basis requesting that Paxton move their household goods intrastate. Mr. Hunt testified there is no Atlas Van Lines franchise in the northern and eastern portions of South Carolina and that the Atlas Van Lines franchise in Columbia found it impractical to make local moves in this area of South Carolina. Of course, Paxton as an Atlas Van Lines franchise is unable to fill this need until such time as it is certificated by this Commission. Mr. Hunt testified Paxton had made a business determination that a need existed for an additional intrastate household mover in South Carolina and that Paxton was prepared to put its considerable resources into filling this need.

Ms. Leete testified that she was a realtor in Charleston, South Carolina, with Carolina One Real Estate. Carolina One Real Estate serves the low-country area of South Carolina and enjoys a substantial portion of market share of the real estate market. Ms. Leete testified that she observed that her clients found it difficult to find movers to

arrange for moves on those dates and times necessary to accommodate their closing schedules. Ms. Leete further testified that she was aware that her fellow real estate agents had similar difficulties. Ms. Leete described certain personal difficulties she and her family members had finding a mover to arrange for moves in the Lowcountry area. Ms. Leete testified that there was a need for an additional mover in South Carolina.

Ms. Mattes testified that she was an interior designer and that she had an opportunity to observe her customers' needs for moving household goods. Ms. Mattes testified that her business market was in the northern part of South Carolina as well as in the Lowcountry area of South Carolina. Ms. Mattes testified that she observed that her customers found it difficult to find movers to arrange for local moves at times and to places necessitated by her customers' sales and/or purchases of homes and furniture. Ms. Mattes also testified as to her difficulty professionally finding movers to move her household goods at those times and to those places necessitated by her business. Ms. Mattes testified that there was a need for an additional mover in South Carolina.

Testifying for Lytle's was Bill Bland; testifying for Kohler was Al Kohler; testifying for Adams was Al Adams; and testifying for Smith Dray Line was Bill Turrentine. The Intervenor's witnesses were all owners and/or operators of their respective moving companies. All witnesses testified that Paxton was reputable and capable of providing service as a household mover in South Carolina. All testified that their respective businesses had seen a drop-off in revenue from their regulated businesses. All testified that their revenues would be adversely affected by the presence of another household mover in the state. Mr. Adams conceded that his revenue from

regulated moves may be as low as 2 percent of his total revenue. Similarly, Mr. Turrentine testified that Smith Dray Line's revenue from regulated moves may be as low as 5 percent of Smith Dray Line's overall revenue. The only intervenor to offer specific documentation for its assertion that the revenue from its regulated business was down was Lytle's. Lytle's offered Hearing Exhibit 1 to suggest that its revenue from regulated moves had fallen 20 percent. Lytle's Exhibit 1 purports to reflect that revenue from regulated moves for the period January 1, 2007, to September 15, 2007, was \$389,585.06. The revenue from regulated moves for the same period 2008 allegedly fell to \$317,336.19. However, ORS witness George Parker confirmed that Lytle's reported only \$17,690 in revenue from its regulated moving business in its Annual Report for the year ending December 31, 2007 (see hearing Exhibit 3). Lytle's witness could offer no explanation for this troubling contradiction. Lytle's, Adams and Smith Dray Line conceded that their revenue from regulated moves was a small fraction of their overall revenue. The Intervenors testified that a number of movers of household goods had closed business and left the market.

Testifying for the ORS was George Parker. Mr. Parker testified as to the nature of the Applicant's physical plant, vehicles and equipment, introducing a number of pictures into the record as Hearing Exhibit 2. Mr. Parker testified that the ORS had no concerns over the Applicant's facilities, trucks, equipment or ability to provide the services offered. Mr. Parker offered no opinion as to whether the public interest would be served by the entry of another household mover into the statewide market.

**FINDINGS OF FACT**

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant, Paxton Van Lines, Inc. d/b/a Paxton Van Lines of North Carolina, Inc. seeks statewide authority to transport household goods as defined by R103-210(1).

2. The Applicant is fit, willing, and able to provide and properly perform the services which it seeks to provide. “Fitness” has been demonstrated since the record contains (1) a certification that the Applicant, through its principal, is familiar with the regulations and statutes governing for-hire motor carrier services; and (2) evidence that there are no outstanding judgments pending against the Applicant or its principals. “Able” was demonstrated by the evidence of record which reveals that the Applicant has the present ability and the necessary trucks, equipment and personnel with which to perform moving services, and has similarly arranged for insurance which meets the minimum requirements set by this Commission. The evidence of record also indicates that the Applicant possesses sufficient financial resources necessary to conduct for-hire motor carrier operations in South Carolina. Moreover, “willingness” was demonstrated by the filing of the application and the testimony of the witnesses indicating the Applicant’s desire to invest its considerable resources to undertake this business venture in South Carolina. Neither the Intervenor nor the ORS contested the fitness, ability and willingness of the Applicant to provide the services requested and this finding of fact is uncontested in the record.

3. The services proposed by the Applicant are required by the public convenience and necessity. We find that the witnesses presented on behalf of the Applicant were credible and establish that the public convenience and necessity require the issuance of the certificate requested by the Applicant. The Applicant and its witnesses were knowledgeable of the need for an additional household mover in South Carolina. Indeed, Paxton is prepared to invest its considerable resources in meeting the need for its services as a mover of household goods. The shipper witnesses, who work and operate across the state, were familiar with the moving needs of their clients. Both professionals were disinterested witnesses and testified to the need for an additional mover with statewide authority. On the other hand, the evidence submitted by the Intervenor provided an insufficient basis for a ruling in their favor.

While this Commission has no doubt that all of the Intervenor are reputable and fully capable of providing services as household movers, all testified that the competition created by the entry of another capable and reputable mover of household goods into the South Carolina market would threaten their regulated businesses. Even if this were the case, the South Carolina Supreme Court has made clear that possible future economic harm resulting from increased competition, while relevant, is not, in and of itself, sufficient justification for denial of the application of a motor carrier applicant who has shown itself to be otherwise fit, willing and able to perform the services for which it seeks certification. *Welch Moving and Storage Co., Inc. v. Pub. Serv. Comm'n of South Carolina*, 301 S.C. 259, 391 S.E.2d 556 (1990). In the *Welch* matter, the Commission denied the application of a North Carolina-based household goods moving company after

hearing testimony from several owner-operators of already-certificated moving companies to the effect that the addition of another statewide-authorized mover would cause them economic harm. No expert witnesses or statistical surveys were offered into the record to support their testimony. On appeal, the South Carolina Supreme Court reversed the Commission, holding that testimony claiming economic harm would result from increased competition, standing alone, was not enough to warrant denial of the application. The factual similarities between the *Welch* case and the present case compel the Commission to apply the same reasoning and reach the same result here as the state supreme court did in that case.

Accordingly, the Commission finds that the services proposed by the Applicant are required by the public convenience and necessity.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that Paxton Van Lines, Inc. d/b/a Paxton Van Lines of North Carolina, Inc. has demonstrated that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp. 2003).
2. The Commission concludes that Paxton Van Lines, Inc. d/b/a Paxton Van Lines of North Carolina, Inc. has sufficiently demonstrated that the public convenience and necessity requires Paxton Van Lines, Inc. d/b/a Paxton Van Lines of North Carolina, Inc.'s proposed services as reflected in its application.



3. Based on the conclusions above, that Paxton Van Lines, Inc. d/b/a Paxton Van Lines of North Carolina, Inc. has demonstrated that it meets the requirements of fit, willing, and able and that it has demonstrated that the public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted and that Paxton Van Lines, Inc. d/b/a Paxton Van Lines of North Carolina, Inc. should be granted statewide authority to transport household goods, as defined in R. 103-210(1). This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

IT IS THEREFORE ORDERED:

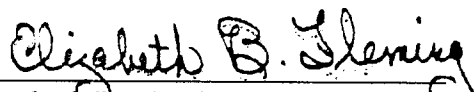
1. That the Application of Paxton Van Lines, Inc. d/b/a Paxton Van Lines of North Carolina, Inc. for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved.
2. Paxton Van Lines, Inc. d/b/a Paxton Van Lines of North Carolina, Inc. shall file the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-23-10 *et. seq.* (1976), as amended, and by 26 S.C. Regs. 103-100 through 103-241 of the Commission's Rules and Regulations for Motor Carriers, as amended, and 23A S.C. Regs. 38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.
3. Upon compliance with S.C. Code Ann. Section 58-23-10 *et. seq.* (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann. Vol. 26

(1976), as amended, a Certificate shall be issued to Paxton Van Lines, Inc. d/b/a Paxton Van Lines of North Carolina, Inc. authorizing the motor carrier services granted herein.

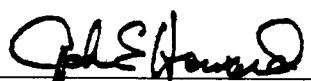
4. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. Failure of the Applicant either (1) to complete the certification process by complying with the Commission requirements of causing to be filed with the Commission proof of appropriate insurance and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements of the Commission as stated above, shall result in the authorization approved in the Order being revoked.

BY ORDER OF THE COMMISSION:

  
Elizabeth B. Fleming, Chairman

ATTEST:

  
John E. Howard, Vice Chairman  
(SEAL)